

was not considered responsive and was not entered. In addition, Applicants submitted a Request to Correct Inventorship Under 37 C.F.R. § 1.48(c)(1) on September 12, 2002, to add Teresa A. Brandt as an inventor of the presently claimed invention. The Petition to Correct Inventorship was granted thereby adding Theresa Brandt as an inventor in the present application.

By this Amendment, Claims 1 - 6 are pending. Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. § 102(a) as allegedly being anticipated by Brandt *et al.*, 2001, J. Virol. 75(2):850-856. Applicants believe that the addition of Theresa A. Brandt as an inventor has removed the cited reference as 35 U.S.C. § 102(a) prior art. However, the Examiner has not found this argument persuasive. Claims 3 and 6 are objected to as being dependent upon a rejected base claim. Claim 7 is withdrawn from consideration as being directed to a non-elected invention.

In order to place the claims in condition for allowance, Claim 7 has been canceled without prejudice to Applicants' right to pursue the canceled subject matter in other patent applications. As such, claims 1-6 remain pending. A clean copy of the claims that will be pending upon entry of this amendment is attached hereto as Exhibit A.

For reasons set forth in detail below, the outstanding rejections and objections be withdrawn and the pending claims be allowed.

**The Rejection Under 35 U.S.C. §102(a)**

Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. § 102(a) as being anticipated by Brandt *et al.*, 2001, J. Virol. 75(2):850-856. Applicants previously submitted a Request to Correct Inventorship Under 37 C.F.R. § 1.48(c)(1) to add Teresa A. Brandt as an inventor and a Statement of Teresa A. Brandt indicating that the error of her omission as inventor arose without

any deceptive intent on her part. The request was granted, as indicated in the Advisory Action dated October 7, 2002, thereby adding Theresa A. Brandt as an inventor.

Applicants believe that the cited reference represents Applicants' own disclosure since the only other author on the cited reference, Bertram L. Jacobs, is also a named inventor on the present application. Thus, Applicants' disclosure of his or her own work within the year before the application filing date cannot be used against him or her under 35 U.S.C. § 102(a). *In re Katz*, 687 F.2d 450, 215 U.S.P.Q. 14 (C.C.P.A. 1982). The Examiner has indicated in the Advisory Action dated October 7, 2002 that the addition of Theresa A. Brandt is not sufficient to remove the cited reference as 102(a) art because under 2132.01 of the MPEP a reference is usable as 102(a) art if the authorship differs in anyway from that of the inventive entity unless it says in the publication itself that the publication is the Applicants' own work.

Applicants respectfully disagree with this interpretation by the Examiner. The cited reference is authored by Theresa A. Brandt (now an inventor and applicant) and Bertram Jacobs (also an inventor and applicant). Therefore, the publication is clearly Applicants' own work. Furthermore, 2132.01 of the MPEP also states that the rejection may be overcome by adding the co-authors of the 102(a) publication as inventors if the requirements of 35 U.S.C. 116 are met, which they were as evidenced by the allowance by the Examiner of the addition of Theresa A. Brandt as an inventor. Notwithstanding, Applicants have requested a three month suspension of action and intend to provide further reasoning to show that the cited reference is not 102(a) art and that the claims are in condition for allowance.

CONCLUSION

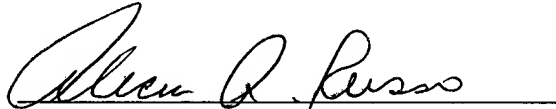
Applicants believe that the foregoing amendment and remarks place the claims in condition for allowance, and request withdrawal of the outstanding rejections and objections. An allowance is earnestly sought.

A courtesy copy of all the pending claims is attached hereto as Exhibit A.

No fee, other than the extension of time fee under 37 C.F.R. § 1.136, RCE filing fee and suspension of action fee is believed due for filing of this paper. The commissioner is hereby authorized to charged such fees and any additional fees that may be due in connection with the filing of this paper to our Deposit Account No. 02-4377. A duplicate of this sheet is enclosed.

Respectfully submitted,

Baker Botts L.L.P.

A handwritten signature in cursive script, appearing to read "Alicia A. Russo", is written over a horizontal line.

Alicia A. Russo  
Patent Office Reg. No. 46,192

Attorney for Applicant

30 Rockefeller Plaza  
New York NY 10112-4498

(212) 408-2627

Date: October 11, 2002

Attachment